

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1886 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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SHANTILAL MOTIRAM PATEL

Versus

THAKOREBHAI RANCHHODBHAI PATEL

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Appearance:

MR PB MAJMUDAR for Petitioner

MR JV BHAIKAVIA for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 28/02/96

ORAL JUDGEMENT

1. RULE. Mr. J.V. Bhairavia waives service of Rule on  
behalf of Respondents No. 1 and 2. With the consent of the  
learned Advocates appearing for the parties, the matter is  
finally heard today.

2. By the impugned judgment and decree dated 25th July,

1995, Assistant Judge, Surat, has allowed the appeal and has set aside the order of the trial court returning the plaint to the plaintiff. It is held that in fact the Civil Court had jurisdiction and has remanded the matter to the trial court. This part of the judgment and order of the lower appellate court was subject matter of challenge in Civil Revision Application No. 1885 of 1995, which is not pressed by Mr. P.B. Majmudar and is same disposed of.

3. The respondent plaintiff preferred Misc. Civil Appeal No. 57 of 1992 against the order passed by the trial court on Exhibit-5 directing the parties to maintain status quo. It is in such appeal, which is allowed by the learned Assistant Judge, Surat, who has proceeded to grant injunction against the defendants restraining them from interfering with the possession of the plaintiff over the suit property which consist of a small room between two big rooms which are admittedly in possession of the petitioner defendant. The dispute related only to small middle room and the contention of the landlord was that such room was never let out to the tenant while contention of the petitioner was that such room was let out to him. The lower appellate court has in its judgment given large number of reasons for granting injunction. But, when he remanded the matter to the trial court for deciding the same on the ground that trial court has jurisdiction and trial court was not justified in returning the plaint, it would have been just and proper for the lower appellate court to leave the matter to the trial court by directing the trial court to decide Exhibit - 5 application afresh without itself undertaking the exercise of deciding the Exhibit-5 application. It ordered the return of the plaint and at that time it directed the parties to maintain status quo. It did not decide the question as to whether the plaintiff was entitled to injunction as prayed for or not. In that view of the matter, the lower appellate court ought to have left the matter to the trial court to decide Exhibit-5 application afresh and to that extent it itself decided Exhibit-5, it exceeded its jurisdiction. The order of the lower appellate court is therefore quashed and set aside and the matter is remanded to the trial court with direction to the trial court to decide Exhibit-5 application afresh in Regular Civil Suit No.594 of 1989 in accordance with law within three months from today. The parties are directed to maintain status quo till Exhibit-5 application is decided by the trial court. Rule is accordingly made absolute.

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